IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17-08-2007

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MRS. JUSTICE R. BANUMATHI

HABEAS CORPUS PETITION NO.99 OF 2007

Shanthi
W/o. Sekar @ Chandrasekar .. Petitioner

Vs.

1. The State of Tamil Nadu,
   Rep. by its Secretary to Govt.,
   Prohibition and Excise Department,
   Fort St. George, Chennai 9.

2. The Commissioner of Police,
   Greater Chennai, Egmore,
   Chennai 8. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Habeas Corpus to call for the records pertaining to the detenu Sekar @ Chandrasekar, son of Ponraj Nadar, who is detained under Tamil Nadu Act 14 of 1982 as Goonda at Central Prison, Puzhal, Chennai by the second respondent vide his order in Memo No.281/BDFGISSV/2006 dated 17.11.2006, on the file of the second respondent herein and to quash the same and direct the respondent to produce the body of the detenu before this Court and set him at liberty.

For Petitioner : Mr.R. Sankarasubbu for
Mr.M. Sathish Kumar

For Respondents : Mr.M. Babu Muthu Meeran
Addl. Public Prosecutor

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O R D E R

P.K. MISRA, J

Wife of the detenu has filed this Habeas Corpus Petition for quashing the order of detention dated 17.11.2006.

2. From the grounds of detention it appears that the detenu came to adverse notice of the police in R-8 Vadapalani Police Station Cr.No.66/2005, wherein it is alleged that he has committed an offence under Sections 341, 323, 324 and 506(2)IPC, on 4.2.2006. The order of detention has been passed on the basis of the incident dated 11.9.2006. It is stated that in 1998 several persons had committed offence under Sections 363, 324, 364 @ 302 IPC and the said murder case was posted for hearing before the Court on 11.9.2006. Some of the accused persons were waiting at the Court to attend trial and since one of the co-accused, namely, Rajadurai, who was in jail custody had not been brought, the Court had asked other accused to wait till the arrival of the co-accused. While the accused persons were proceeding to take lunch, Tvl. Binu, Radha @ Radhakrishnan, Allavudin, Reagen, Ramesh, Jai @ Jaikumar, Sekar @ Chandrasekar (present detenu), Karuna @ Karunakaran, Hari @ Bangalore Hari, who were armed with knives, ran towards those accused persons. At that time, Thiru. Saravanan, one of the accused facing trial in Madhuravayal Police Station Cr.No.1126/1998, ran away from the spot. Tvl. Binu, Radha @ Radhakrishnan, Allavudin, Reagen, Ramesh, Jai @ Jaikumar, Sekar @ Chandrasekar, Karuna @ Karunakaran, Hari @ Bangalore Hari chased Elumalai, another accused, who fell down and raised hue and cry stating that he should not be assaulted. Binu caught Elumalai and asked his associates to cut Elumalai. Other persons including the detenu, gave cut-blows indiscriminately. Public came for Elumalai's rescue, but the assailants threatened the public and subsequently ran away. On the basis of the aforesaid allegation, T-12 Poonamallee Police Station Cr.No.1009/2006 for offence under Sections 148, 149, 302 and 506(2) IPC was registered. The detenu along with few others were arrested on 22.9.2006 and subsequently they were produced before the Judicial Magistrate, who remanded them to judicial custody till 6.10.2006. Subsequently, remand was further extended periodically till 23.11.2006. The detention order was passed on 17.11.2006.

3. In the grounds of detention, the detaining authority recited :-

> "4. I am aware that Thiru Sekar @ Chandrasekar is in remand in T-12 Poonamallee Police Station Crime No.1009/2006 and he has not moved any bail application so far. I am also aware that there is real possibility that he may come out on bail by filing bail application before the same court or higher courts since in

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similar cases bails are granted by the same court or higher courts. If he comes out on bail, he will indulge in further activities, which will be prejudicial to the maintenance of pubic order...."

4. Learned counsel appearing for the petitioner has first contended that there is unnecessary delay in disposal of the representation and the subsequent communication of the result of such representation.

5. From the materials on record it is evident that the on the representation received on 7.5.2007, remarks were were called for and received on 15.5.2007. The File was submitted on 17.5.2007 and the Under Secretary and the Deputy Secretary dealt with the same on 18.5.2007. 19th and 20th May 2007 were non-working days (being Saturday and Sunday). Thereafter the Minister has dealt with the File on 22.5.2007 and the rejection letter prepared on 23.5.2007 was sent to the detenu by post on 28.5.2007. We hardly see any delay between the date of receipt of the representation and disposal by the Minister. However, the contention of the petitioner is to the effect that rejection letter prepared on 23.5.2007 was sent to the detenu only on 28.5.2007 and no explanation has been forthcoming as to why the rejection letter, after it was prepared, could not be dispatched immediately as it only required a mere work of sending the letter for communication by post.

6. It is of course true that 26.5.2007 and 27.5.2007 were holidays being Saturday and Sunday, but in our considered opinion, the letter of rejection, after being prepared on 23.5.2007, can be dispatched on the very same day or otherwise on 24th or even latest by 25th May, 2007. We fail to understand as to why the office has to wait till 28.5.2007 for dispatching the letter of rejection.

7. It is now well settled by a series of decisions that a representation is required to be disposed of expeditiously without any unnecessary and unexplained delay and even after disposal of such representation it is required to be communicated to the detenu without any unnecessary delay. In the present case, we have not found any delay in disposal of the representation as such, but we find that there is unjustified delay in communicating the result of such representation. On this ground, the detention order is liable to be quashed.

8. Next contention raised by the petitioner is regarding non-application of mind on the imminent possibility of detenu being released on bail. The detaining authority has observed :-

"4. I am aware that Thiru Sekar @ Chandrasekar is in remand in T-12 Poonamallee Police Station Crime No.1009/2006 and he has not moved any bail application so far. I am also aware that there is real possibility that he may come out on bail by filing bail application before the same court or higher courts since in

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similar cases bails are granted by the same court or higher courts. If he comes out on bail, he will indulge in further activities, which will be prejudicial to the maintenance of public order. ..."

9. Learned counsel for the petitioner has submitted that such conclusion is based on the mere ipse dixit of the detaining authority without any material on record.

10. It has been held in several decisions of the Supreme Court that even though there is no embargo on passing an order of detention in respect of a person already in custody, before passing such order of detention, the detaining authority is required to come to a conclusion that there is imminent possibility of being released on bail. It is no doubt true that the ultimate conclusion is based on the subjective satisfaction of the detaining authority and ordinarily the Court cannot sit over such conclusion. However, it is well recognized that such conclusion of the detaining authority should not be the mere ipse dixit of the detaining authority, but on the other hand should be based on cogent materials on record. (See 2004(8) SCC 106 (T.P. MOIDEEN KOYA v. STATE OF KERALA), 2004 SCC (Crl)239 (UNION OF INDIA v. PAUL MANICKAM, (2006)1 M.L.J.(Crl.) 539 (T.V. SARAVANAN alias S.A.R. PRASANNA VENKATACHARIAR CHATURVEDI v. STATE, THROUGH SECRETARY AND ANOTHER),(2006) 9 SCC 711 (A. SHANTHI (SMT) v. GOVERNMENT OF TAMIL NADU AND OTHERS) and the Full Bench decision in 2005(4) CTC 497 (K. THIRUPATHI v. DISTRICT MAGISTRATE AND DISTRICT COLLECTOR, TIRUCHIRAPALLI DISTRICT AT TIRUCHIRAPALI AND ANOTHER) HCP.No.1303 of 2006 disposed of on 27.6.2007.

This Court has passed several orders by following the ratio of those decisions, including the H.C.P.No.1303 of 2006 disposed of on 27.6.2007 and HCP.Nos.46, 52, 74, 79 and 131 of 2007 date 19.6.2007.

11. Learned counsel for the respondents has placed strong reliance upon the decisions of the Supreme Court reported in (2006) 3 SCC (Cri) 17 (IBRAHIM NAZEER v. STATE OF TAMIL NADU AND ANOTHER), (2006) 3 SCC (Cri) 50 (SENTHAMIL SELVI v. STATE OF TAMIL NADU AND ANOTHER) and (2006) 3 SCC (Cri) 324 (A. GEETHA v. STATE OF TAMI NADU AND ANOTHER).

12. Learned counsel for the respondents has placed strong reliance upon the decisions of the Supreme Court reported in (2006) 3 SCC (Cri) 17 (IBRAHIM NAZEER v. STATE OF TAMIL NADU AND ANOTHER), (2006) 3 SCC (Cri) 50 (SENTHAMIL SELVI v. STATE OF TAMIL NADU AND ANOTHER) and (2006) 3 SCC (Cri) 324 (A. GEETHA v. STATE OF TAMIL NADU AND ANOTHER).

13. In (2006) 3 SCC (Cri) 17 (IBRAHIM NAZEER v. STATE OF TAMIL NADU AND ANOTHER), the detention was under COFEPOSA Act. The only contention was to the effect that the High Court was not justified in upholding the conclusion of the detaining authority regarding imminent possibility of the detenu coming out on bail, more particularly when the

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detenu had not filed any bail application after withdrawal of the first bail application. The Supreme Court observed:-

> "7. It has to be noted that whether prayer for bail would be accepted depends on the circumstances of each case and no hard-and-fast rule can be applied. The only requirement is that the detaining authority should be aware that the detenu is already in custody and is likely to be released on bail. The conclusion that the detenu may be released on bail cannot be an ipse dixit of the detaining authority. On the basis of materials before it, the detaining authority came to the conclusion that there is likelihood of the detenu being released on bail. That is his subjective satisfaction based on materials. Normally, such satisfaction is not to be interfered with. On the facts of the case, the detaining authority has indicated as to why he was of the opinion that there is likelihood of the detenu being released on bail. It has been clearly stated that in similar cases, orders granting bail are passed by various courts. The appellant has not disputed the correctness of this statement. Strong reliance was placed by learned counsel for the appellant on Rajesh Gulati v. Govt. of NCT of Delhi. The factual scenario in that case was entirely different. In fact, five bail applications filed had been already rejected. In that background this Court observed that it was not a "normal" case. The High Court was justified in rejecting the stand of the appellant." (Emphasis added)

14. In (2006) 3 SCC (Cri) 324 (A. GEETHA v. STATE OF TAMIL NADU AND ANOTHER), the detenu was detained under Section 3(2) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982, on the allegation that detenu was indulging in immoral trafficking. In the appeal, conclusion about the imminent possibility of being released on bail was under challenge. The Supreme Court made similar observations. :-

> "10. It has to be noted that whether prayer for bail would be accepted depends on circumstances of each case and no hard-and-fast rule can be applied. The only requirement is that the detaining authority should be aware that the detenu is already in custody and is likely to be released on bail. The conclusion that the detenu may be released on bail cannot be ipse dixit of the detaining authority. On the basis of materials before him, the detaining authority came to the conclusion that there is likelihood of the detenu being released on bail. That is his subjective satisfaction based on materials. Normally, such satisfaction is not to be interfered with. On the facts of the case, the detaining authority has indicated as to why he was of the opinion that there is likelihood of the detenu being released on bail. It has been clearly stated that in similar cases, orders granting bail are passed by various courts. The

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appellant has not disputed the correctness of this statement. Strong reliance was placed by learned counsel for the appellant on Rajesh Gulati v. Govt. of NCT of Delhi. The factual scenario in that case was entirely different. In fact, five bail applications filed had been already rejected. In that background this Court observed that it was not a "normal" case. The High Court was justified in rejecting the stand of the appellant. (See Ibrahim Nazeer v. State of T.N. And Sethamilselvi v. State of T.N.)"

15. Similar observations had also been made in (2006) 3 SCC (Cri) 50 (SENTHAMILSELVI v. STATE OF TAMIL NADU AND ANOTHER).

16. A careful reading of these decisions indicates that conclusion of the detaining authority regarding imminent possibility of being released on bail was based on materials and as such was not liable to be interfered with as conclusion of the detaining authority on the basis of materials on record regarding imminent possibility of coming out on bail should not be interfered with. At the same time, the Supreme Court emphasised that such conclusion should not be based on the mere ipse dixit of the detaining authority, but on the other hand should be based on materials on record. As a matter of fact, in all these three cases, the detaining authority had come to the conclusion that in similar cases orders granting bail are passed by various courts and the Supreme Court observed that the appellant "had not disputed" the correctness of such statement. In other words, it is very much clear that the appellant in those cases had not disputed the correctness of the statement that in similar cases bail orders are granted. As a matter of fact, keeping in view the nature of offence in the first two cases noticed by us, one under the Customs Act and the other under Prevention of Immoral Traffic Act, it can be readily concluded that grant of bail is the rule rather than the exception and obviously that is the reason why the appellant had not disputed the correctness of the statement that in similar cases bail orders are granted by the courts.

17. We are unable to persuade ourselves to come to the conclusion that the Supreme Court in the above three decisions intended to depart from the well settled principle of law recognized by series of decisions, which have already been noticed. However, on the peculiar facts situation, the Supreme Court had concluded that conclusion of the detaining authority regarding possibility of being released on bail was based on materials on record and, therefore, not to be interfered with.

18. Keeping in view the well settled principle in the aforesaid Supreme Court cases, it has to be decided in the facts of this case as to whether there was materials in support of the detaining authority for coming to the conclusion that there was any real possibility of detenu being coming out on bail.

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19. It is contended by the learned Addl. Public Prosecutor that in the Full Bench decision of this Court (cited supra) it has been held that absence of the expression "that there is imminent possibility of being released on bail" may not have the effect of vitiating the satisfaction.

20. A careful reading of the decision of the Full Bench makes it clear that even though the detaining authority has not used the expression "imminent possibility of being released on bail", if the materials on record indicate such satisfaction, the order of detention cannot be challenged on the ground that such specific recording has not been made.

21. In the present case, the possibility of availing statutory bail would have arisen after a period of four weeks. May be if the detaining authority comes to such a conclusion when 90 days period is about to be over (when only 8 to 10 days are left), one possibly should not interfere with such subjective satisfaction, but in the present case the statutory bail if at all would have been available after four weeks and, therefore, it cannot be said that possibility of getting statutory bail was very much imminent or round the corner.

22. It is well recognized that question of grant of bail is based on several factors such as nature of allegation, stage of investigation and even the statutory bail as contemplated under Section 167(2)proviso of Cr.P.C. It is not in dispute and in fact the detaining authority was also aware that investigation in the ground case was still in progress. The offence committed in the ground case is 302 IPC. The conclusion of the detaining authority that "there is real possibility that he may come out on bail by filing bail application before the same court or higher courts since in similar cases bails are granted by the same court or higher courts" can only be characterized as mere ipse dixit. It does not require much imagination to come to a conclusion that in cases where accused persons are accused of having committed serious offence like 302, 395 IPC., ordinarily no court would grant bail unless investigation is completed. Offence of 302 IPC is not an offence of a routine nature like 323 or 324 or 379 or 392 IPC., where one can reasonably conclude that bail may be granted once bail application is filed, even before completion of the investigation. Conclusion of the detaining authority that there is real possibility of detenu coming out on bail and in similar cases bails are granted by the same court or higher courts is in fact an affront to the common sense of the Judiciary. It is also to be remembered that in the case on hand the offence under Section 302 IPC being punishable with death or life imprisonment, statutory period available for completion of investigation was 90 days and, therefore, there was no possibility of being released on bail by availing such statutory provision. The detention order has been passed after about 2 months of the arrest and therefore about one month time was still left for the purpose of completion of investigation. There has been no material to show that

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investigation is of a complicated nature and there was no likelihood of completion of investigation before 90 days. Keeping in view the seriousness of nature of the allegation, there is absolutely no justification that even before completion of the investigation bail would be granted.

For the aforesaid reasons and in the absence of any material on record, we are constrained to observe that magic incantation of the words "there is real possibility that he may come out on bail by filing bail application before the same court or higher courts since in similar cases bails are granted by the same court or higher courts" is the mere ipse dixit on the part of the detaining authority rather than based on any material whatsoever.

23. Lastly it is contended by the petitioner that narration of the adverse case, as apparent from the grounds of detention, indicates that the alleged occurrence therein occurred almost as a reaction because of dashing of motor-cycle and the accident took place suddenly as a reaction and obviously in a pre-conceived manner. Apart from the said adverse case, there was no other adverse case against the detenu and thereafter the alleged ground case took place. In such a background, according to the learned counsel for the petitioner it cannot be said that the detenu was a habitual offender or Goonda as defined under the Act necessitating any preventive order of detention.

24. Keeping in view the background of which the first adverse case was committed, this contention of the petitioner may prima facie appear to be justified. Since we are quashing the order of detention on the other grounds, it is not necessary for us to delve further into this aspect.

25. For the aforesaid reasons, the Habeas Corpus Petition is allowed and the detention order is quashed and the detenu is set at liberty forthwith unless his presence is required in connection with any other case.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

dpk

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To

1. The Secretary to Govt.,
   Prohibition and Excise Department,
   Fort St. George, Chennai 9.

2. The Commissioner of Police,
   Greater Chennai, Egmore,
   Chennai 8.

3. The Public Prosecutor,
   High Court, Madras.

4. The Superintendent,
Central prison, Chennai.

5. The Joint Secretary to Government,
Public [Law and Order] Department,
Fort St. George, Chennai 9.

+ 1 CC To Mr.M.Sathish Kumar, Advocate SR NO.51640

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